

## **IC 35-42-4**

### **Chapter 4. Sex Crimes**

#### **IC 35-42-4-0.1**

##### **Repealed**

*(Repealed by P.L.63-2012, SEC.49.)*

#### **IC 35-42-4-1**

##### **Rape**

Sec. 1. (a) Except as provided in subsection (b), a person who knowingly or intentionally has sexual intercourse with another person or knowingly or intentionally causes another person to perform or submit to other sexual conduct (as defined in IC 35-31.5-2-221.5) when:

- (1) the other person is compelled by force or imminent threat of force;
- (2) the other person is unaware that the sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) is occurring; or
- (3) the other person is so mentally disabled or deficient that consent to sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) cannot be given;

commits rape, a Level 3 felony.

(b) An offense described in subsection (a) is a Level 1 felony if:

- (1) it is committed by using or threatening the use of deadly force;
- (2) it is committed while armed with a deadly weapon;
- (3) it results in serious bodily injury to a person other than a defendant; or
- (4) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

*As added by Acts 1976, P.L.148, SEC.2. Amended by Acts 1977, P.L.340, SEC.36; P.L.320-1983, SEC.23; P.L.16-1984, SEC.19; P.L.297-1989, SEC.1; P.L.31-1998, SEC.3; P.L.158-2013, SEC.437; P.L.214-2013, SEC.36; P.L.168-2014, SEC.67.*

#### **IC 35-42-4-2**

##### **Repealed**

*(Repealed by P.L.158-2013, SEC.438; P.L.214-2013, SEC.37.)*

#### **IC 35-42-4-3**

##### **Child molesting**

Sec. 3. (a) A person who, with a child under fourteen (14) years of age, knowingly or intentionally performs or submits to sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) commits child molesting, a Level 3 felony. However, the offense is a Level 1 felony if:

(1) it is committed by a person at least twenty-one (21) years of age;

(2) it is committed by using or threatening the use of deadly force or while armed with a deadly weapon;

(3) it results in serious bodily injury; or

(4) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(b) A person who, with a child under fourteen (14) years of age, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits child molesting, a Level 4 felony. However, the offense is a Level 2 felony if:

(1) it is committed by using or threatening the use of deadly force;

(2) it is committed while armed with a deadly weapon; or

(3) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(c) A person may be convicted of attempted child molesting of an individual at least fourteen (14) years of age if the person believed the individual to be a child under fourteen (14) years of age at the time the person attempted to commit the offense.

(d) It is a defense to a prosecution under this section that the accused person reasonably believed that the child was sixteen (16) years of age or older at the time of the conduct, unless:

(1) the offense is committed by using or threatening the use of deadly force or while armed with a deadly weapon;

(2) the offense results in serious bodily injury; or

(3) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

*As added by Acts 1976, P.L.148, SEC.2. Amended by Acts 1977, P.L.340, SEC.38; Acts 1978, P.L.82, SEC.2; Acts 1981, P.L.301, SEC.1; P.L.79-1994, SEC.12; P.L.33-1996, SEC.8; P.L.216-1996, SEC.18; P.L.31-1998, SEC.5; P.L.216-2007, SEC.42; P.L.158-2013, SEC.439; P.L.247-2013, SEC.6; P.L.168-2014, SEC.68.*

#### **IC 35-42-4-4**

#### **Child exploitation; possession of child pornography; exemptions; defenses**

Sec. 4. (a) The following definitions apply throughout this section:

(1) "Disseminate" means to transfer possession for free or for a consideration.

(2) "Matter" has the same meaning as in IC 35-49-1-3.

(3) "Performance" has the same meaning as in IC 35-49-1-7.

(4) "Sexual conduct" means sexual intercourse, other sexual conduct (as defined in IC 35-31.5-2-221.5), exhibition of the uncovered genitals intended to satisfy or arouse the sexual desires of any person, sadomasochistic abuse, sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with an animal, or any fondling or touching of a child by another person or of another person by a child intended to arouse or satisfy the sexual desires of either the child or the other person.

(b) A person who:

(1) knowingly or intentionally manages, produces, sponsors, presents, exhibits, photographs, films, videotapes, or creates a digitized image of any performance or incident that includes sexual conduct by a child under eighteen (18) years of age;

(2) knowingly or intentionally disseminates, exhibits to another person, offers to disseminate or exhibit to another person, or sends or brings into Indiana for dissemination or exhibition matter that depicts or describes sexual conduct by a child under eighteen (18) years of age;

(3) knowingly or intentionally makes available to another person a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts or describes sexual conduct by a child less than eighteen (18) years of age;

or

(4) with the intent to satisfy or arouse the sexual desires of any person:

(A) knowingly or intentionally:

(i) manages;

(ii) produces;

(iii) sponsors;

(iv) presents;

(v) exhibits;

(vi) photographs;

(vii) films;

(viii) videotapes; or

(ix) creates a digitized image of;

any performance or incident that includes the uncovered genitals of a child less than eighteen (18) years of age or the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age;

(B) knowingly or intentionally:

(i) disseminates to another person;

(ii) exhibits to another person;

(iii) offers to disseminate or exhibit to another person; or

(iv) sends or brings into Indiana for dissemination or

exhibition;  
matter that depicts the uncovered genitals of a child less than eighteen (18) years of age or the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age; or  
(C) makes available to another person a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts the uncovered genitals of a child less than eighteen (18) years of age or the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age;  
commits child exploitation, a Level 5 felony.

(c) A person who knowingly or intentionally possesses:

- (1) a picture;
- (2) a drawing;
- (3) a photograph;
- (4) a negative image;
- (5) undeveloped film;
- (6) a motion picture;
- (7) a videotape;
- (8) a digitized image; or
- (9) any pictorial representation;

that depicts or describes sexual conduct by a child who the person knows is less than eighteen (18) years of age or who appears to be less than eighteen (18) years of age, and that lacks serious literary, artistic, political, or scientific value commits possession of child pornography, a Level 6 felony.

(d) Subsections (b) and (c) do not apply to a bona fide school, museum, or public library that qualifies for certain property tax exemptions under IC 6-1.1-10, or to an employee of such a school, museum, or public library acting within the scope of the employee's employment when the possession of the listed materials is for legitimate scientific or educational purposes.

(e) It is a defense to a prosecution under this section that:

- (1) the person is a school employee; and
- (2) the acts constituting the elements of the offense were performed solely within the scope of the person's employment as a school employee.

(f) Except as provided in subsection (g), it is a defense to a prosecution under subsection (b) or (c) if all of the following apply:

- (1) A cellular telephone, another wireless or cellular communications device, or a social networking web site was used to possess, produce, or disseminate the image.
- (2) The defendant is not more than four (4) years older or younger than the person who is depicted in the image or who received the image.
- (3) The relationship between the defendant and the person who received the image or who is depicted in the image was a dating relationship or an ongoing personal relationship. For purposes of this subdivision, the term "ongoing personal relationship"

does not include a family relationship.

(4) The crime was committed by a person less than twenty-two (22) years of age.

(5) The person receiving the image or who is depicted in the image acquiesced in the defendant's conduct.

(g) The defense to a prosecution described in subsection (f) does not apply if:

(1) the person who receives the image disseminates it to a person other than the person:

(A) who sent the image; or

(B) who is depicted in the image;

(2) the image is of a person other than the person who sent the image or received the image; or

(3) the dissemination of the image violates:

(A) a protective order to prevent domestic or family violence issued under IC 34-26-5 (or, if the order involved a family or household member, under IC 34-26-2 or IC 34-4-5.1-5 before their repeal);

(B) an ex parte protective order issued under IC 34-26-5 (or, if the order involved a family or household member, an emergency order issued under IC 34-26-2 or IC 34-4-5.1 before their repeal);

(C) a workplace violence restraining order issued under IC 34-26-6;

(D) a no contact order in a dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the person to refrain from direct or indirect contact with a child in need of services or a delinquent child;

(E) a no contact order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion, and including a no contact order issued under IC 35-33-8-3.6;

(F) a no contact order issued as a condition of probation;

(G) a protective order to prevent domestic or family violence issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2 before their repeal);

(H) a protective order to prevent domestic or family violence issued under IC 31-14-16-1 in a paternity action;

(I) a no contact order issued under IC 31-34-25 in a child in need of services proceeding or under IC 31-37-25 in a juvenile delinquency proceeding;

(J) an order issued in another state that is substantially similar to an order described in clauses (A) through (I);

(K) an order that is substantially similar to an order described in clauses (A) through (I) and is issued by an Indian:

(i) tribe;

- (ii) band;
  - (iii) pueblo;
  - (iv) nation; or
  - (v) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);
- that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians;
- (L) an order issued under IC 35-33-8-3.2; or
  - (M) an order issued under IC 35-38-1-30.
- (h) It is a defense to a prosecution under this section that:
- (1) the person was less than eighteen (18) years of age at the time the alleged offense was committed; and
  - (2) the circumstances described in IC 35-45-4-6(a)(2) through IC 35-45-4-6(a)(4) apply.
- (i) A person is entitled to present the defense described in subsection (h) in a pretrial hearing. If a person proves by a preponderance of the evidence in a pretrial hearing that the defense described in subsection (h) applies, the court shall dismiss the charges under this section with prejudice.

*As added by Acts 1978, P.L.148, SEC.5. Amended by P.L.325-1983, SEC.1; P.L.206-1986, SEC.1; P.L.37-1990, SEC.25; P.L.59-1995, SEC.3; P.L.216-1996, SEC.19; P.L.3-2002, SEC.2; P.L.216-2007, SEC.43; P.L.180-2011, SEC.3; P.L.6-2012, SEC.226; P.L.181-2013, SEC.1; P.L.214-2013, SEC.38; P.L.158-2013, SEC.440; P.L.168-2014, SEC.69.*

#### **IC 35-42-4-5**

##### **Vicarious sexual gratification; sexual conduct in presence of a minor**

Sec. 5. (a) A person eighteen (18) years of age or older who knowingly or intentionally directs, aids, induces, or causes a child under the age of sixteen (16) to touch or fondle himself or herself or another child under the age of sixteen (16) with intent to arouse or satisfy the sexual desires of a child or the older person commits vicarious sexual gratification, a Level 5 felony. However, the offense is:

- (1) a Level 4 felony if a child involved in the offense is under the age of fourteen (14); and
- (2) a Level 3 felony if:
  - (A) the offense is committed by using or threatening the use of deadly force or while armed with a deadly weapon;
  - (B) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge; or

(C) the commission of the offense results in serious bodily injury.

(b) A person eighteen (18) years of age or older who knowingly or intentionally directs, aids, induces, or causes a child under the age of sixteen (16) to:

- (1) engage in sexual intercourse with another child under sixteen (16) years of age;
- (2) engage in sexual conduct with an animal other than a human being; or
- (3) engage in other sexual conduct (as defined in IC 35-31.5-2-221.5) with another person;

with intent to arouse or satisfy the sexual desires of a child or the older person commits vicarious sexual gratification, a Level 4 felony. However, the offense is a Level 3 felony if any child involved in the offense is less than fourteen (14) years of age, and the offense is a Level 2 felony if the offense is committed by using or threatening the use of deadly force, if the offense is committed while armed with a deadly weapon, if the offense results in serious bodily injury, or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(c) A person eighteen (18) years of age or older who knowingly or intentionally:

- (1) engages in sexual intercourse;
- (2) engages in other sexual conduct (as defined in IC 35-31.5-2-221.5); or
- (3) touches or fondles the person's own body;

in the presence of a child less than fourteen (14) years of age with the intent to arouse or satisfy the sexual desires of the child or the older person commits performing sexual conduct in the presence of a minor, a Level 6 felony.

*As added by P.L.183-1984, SEC.4. Amended by P.L.79-1994, SEC.13; P.L.31-1998, SEC.6; P.L.118-2002, SEC.1; P.L.123-2003, SEC.1; P.L.158-2013, SEC.441.*

#### **IC 35-42-4-6**

##### **Child solicitation**

Sec. 6. (a) As used in this section, "solicit" means to command, authorize, urge, incite, request, or advise an individual:

- (1) in person;
- (2) by telephone or wireless device;
- (3) in writing;
- (4) by using a computer network (as defined in IC 35-43-2-3(a));
- (5) by advertisement of any kind; or
- (6) by any other means;

to perform an act described in subsection (b) or (c).

(b) A person eighteen (18) years of age or older who knowingly

or intentionally solicits a child under fourteen (14) years of age, or an individual the person believes to be a child under fourteen (14) years of age, to engage in sexual intercourse, other sexual conduct (as defined in IC 35-31.5-2-221.5), or any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person, commits child solicitation, a Level 5 felony. However, the offense is a Level 4 felony if the person solicits the child or individual the person believes to be a child under fourteen (14) years of age to engage in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) and:

- (1) commits the offense by using a computer network (as defined in IC 35-43-2-3(a)) and travels to meet the child or individual the person believes to be a child; or
- (2) has a previous unrelated conviction for committing an offense under this section.

(c) A person at least twenty-one (21) years of age who knowingly or intentionally solicits a child at least fourteen (14) years of age but less than sixteen (16) years of age, or an individual the person believes to be a child at least fourteen (14) years of age but less than sixteen (16) years of age, to engage in sexual intercourse, other sexual conduct (as defined in IC 35-31.5-2-221.5), or any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person, commits child solicitation, a Level 5 felony. However, the offense is a Level 4 felony if the person solicits the child or individual the person believes to be a child at least fourteen (14) but less than sixteen (16) years of age to engage in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5), and:

- (1) commits the offense by using a computer network (as defined in IC 35-43-2-3(a)) and travels to meet the child or individual the person believes to be a child; or
- (2) has a previous unrelated conviction for committing an offense under this section.

(d) In a prosecution under this section, including a prosecution for attempted solicitation, the state is not required to prove that the person solicited the child to engage in an act described in subsection (b) or (c) at some immediate time.

*As added by P.L.183-1984, SEC.5. Amended by P.L.11-1994, SEC.16; P.L.79-1994, SEC.14; P.L.216-1996, SEC.20; P.L.118-2002, SEC.2; P.L.124-2005, SEC.1; P.L.216-2007, SEC.44; P.L.158-2013, SEC.442; P.L.247-2013, SEC.7; P.L.168-2014, SEC.70.*

#### **IC 35-42-4-7**

##### **Child seduction**

Sec. 7. (a) As used in this section, "adoptive parent" has the meaning set forth in IC 31-9-2-6.

(b) As used in this section, "adoptive grandparent" means the parent of an adoptive parent.

(c) As used in this section, "charter school" has the meaning set



forth in IC 20-18-2-2.5.

(d) As used in this section, "child care worker" means a person who:

(1) provides care, supervision, or instruction to a child within the scope of the person's employment in a shelter care facility;

(2) is employed by a:

(A) school corporation;

(B) charter school;

(C) nonpublic school; or

(D) special education cooperative;

attended by a child who is the victim of a crime under this chapter; or

(3) is:

(A) affiliated with a:

(i) school corporation;

(ii) charter school;

(iii) nonpublic school; or

(iv) special education cooperative;

attended by a child who is the victim of a crime under this chapter, regardless of how or whether the person is compensated;

(B) in a position of trust in relation to a child who attends the school or cooperative;

(C) engaged in the provision of care or supervision to a child who attends the school or cooperative; and

(D) at least four (4) years older than the child who is the victim of a crime under this chapter.

The term does not include a student who attends the school or cooperative.

(e) As used in this section, "custodian" means any person who resides with a child and is responsible for the child's welfare.

(f) As used in this section, "mental health professional" means:

(1) a mental health counselor licensed under IC 25-23.6-8.5;

(2) a psychologist; or

(3) a psychiatrist.

(g) As used in this section, "military recruiter" means a member of the armed forces of the United States (as defined in IC 20-33-10-2) or the Indiana National Guard whose primary job function, classification, or specialty is recruiting individuals to enlist with the armed forces of the United States or the Indiana National Guard.

(h) As used in this section, "nonpublic school" has the meaning set forth in IC 20-18-2-12.

(i) For purposes of this section, a person has a "professional relationship" with a child if:

(1) the person:

(A) has a license issued by the state or a political subdivision on the basis of the person's training and experience that authorizes the person to carry out a particular occupation; or

(B) is employed in a position in which counseling,

- supervising, instructing, or recruiting children forms a significant part of the employment; and
- (2) the person has a relationship with a child that is based on the person's employment or licensed status as described in subdivision (1).

The term includes a relationship between a child and a mental health professional or military recruiter. The term does not include a coworker relationship between a child and a person described in subdivision (1)(B).

(j) As used in this section, "school corporation" has the meaning set forth in IC 20-18-2-16.

(k) As used in this section, "special education cooperative" has the meaning set forth in IC 20-35-5-1.

(l) As used in this section, "stepparent" means an individual who is married to a child's custodial or noncustodial parent and is not the child's adoptive parent.

(m) If a person who:

- (1) is at least eighteen (18) years of age; and
  - (2) is the:
    - (A) guardian, adoptive parent, adoptive grandparent, custodian, or stepparent of; or
    - (B) child care worker for;
- a child at least sixteen (16) years of age but less than eighteen (18) years of age;

engages with the child in sexual intercourse, other sexual conduct (as defined in IC 35-31.5-2-221.5), or any fondling or touching with the intent to arouse or satisfy the sexual desires of either the child or the adult, the person commits child seduction.

(n) A person who:

- (1) has or had a professional relationship with a child at least sixteen (16) years of age but less than eighteen (18) years of age whom the person knows to be at least sixteen (16) years of age but less than eighteen (18) years of age;
- (2) may exert undue influence on the child because of the person's current or previous professional relationship with the child; and
- (3) uses or exerts the person's professional relationship to engage in sexual intercourse, other sexual conduct (as defined in IC 35-31.5-2-221.5), or any fondling or touching with the child with the intent to arouse or satisfy the sexual desires of the child or the person;

commits child seduction.

(o) A law enforcement officer who:

- (1) is at least five (5) years older than a child who is:
  - (A) at least sixteen (16) years of age; and
  - (B) less than eighteen (18) years of age;
- (2) has contact with the child while acting within the scope of the law enforcement officer's official duties with respect to the child; and
- (3) uses or exerts the law enforcement officer's professional

relationship with the child to engage with the child in:

- (A) sexual intercourse;
- (B) other sexual conduct (as defined in IC 35-31.5-2-221.5);
- or
- (C) any fondling or touching with the child with the intent to arouse or satisfy the sexual desires of the child or the law enforcement officer;

commits child seduction.

(p) In determining whether a person used or exerted the person's professional relationship with the child to engage in sexual intercourse, other sexual conduct (as defined in IC 35-31.5-2-221.5), or any fondling or touching with the intent to arouse or satisfy the sexual desires of the child or the person under this section, the trier of fact may consider one (1) or more of the following:

- (1) The age difference between the person and the child.
- (2) Whether the person was in a position of trust with respect to the child.
- (3) Whether the person's conduct with the child violated any ethical obligations of the person's profession or occupation.
- (4) The authority that the person had over the child.
- (5) Whether the person exploited any particular vulnerability of the child.
- (6) Any other evidence relevant to the person's ability to exert undue influence over the child.

(q) Child seduction under this section is:

- (1) a Level 6 felony if the person or law enforcement officer engaged in any fondling or touching with the intent to arouse or satisfy the sexual desires of:
  - (A) the child; or
  - (B) the person or law enforcement officer; and
- (2) a Level 5 felony if the person or law enforcement officer engaged in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with the child.

*As added by P.L.158-1987, SEC.4. Amended by P.L.1-1997, SEC.148; P.L.71-1998, SEC.5; P.L.228-2001, SEC.5; P.L.161-2003, SEC.10; P.L.1-2005, SEC.228; P.L.125-2009, SEC.7; P.L.114-2012, SEC.138; P.L.208-2013, SEC.8; P.L.158-2013, SEC.443; P.L.168-2014, SEC.71; P.L.226-2014(ts), SEC.5.*

### **IC 35-42-4-8**

#### **Sexual battery**

Sec. 8. (a) A person who, with intent to arouse or satisfy the person's own sexual desires or the sexual desires of another person:

- (1) touches another person when that person is:
  - (A) compelled to submit to the touching by force or the imminent threat of force; or
  - (B) so mentally disabled or deficient that consent to the touching cannot be given; or
- (2) touches another person's genitals, pubic area, buttocks, or female breast when that person is unaware that the touching is

occurring;  
commits sexual battery, a Level 6 felony.

(b) An offense described in subsection (a) is a Level 4 felony if:

- (1) it is committed by using or threatening the use of deadly force;
- (2) it is committed while armed with a deadly weapon; or
- (3) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

*As added by P.L.322-1987, SEC.2. Amended by P.L.31-1998, SEC.7; P.L.72-2012, SEC.4; P.L.158-2013, SEC.444.*

### **IC 35-42-4-9**

#### **Sexual misconduct with a minor**

Sec. 9. (a) A person at least eighteen (18) years of age who, with a child at least fourteen (14) years of age but less than sixteen (16) years of age, performs or submits to sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) commits sexual misconduct with a minor, a Level 5 felony. However, the offense is:

- (1) a Level 4 felony if it is committed by a person at least twenty-one (21) years of age; and
- (2) a Level 1 felony if it is committed by using or threatening the use of deadly force, if it is committed while armed with a deadly weapon, if it results in serious bodily injury, or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(b) A person at least eighteen (18) years of age who, with a child at least fourteen (14) years of age but less than sixteen (16) years of age, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits sexual misconduct with a minor, a Level 6 felony. However, the offense is:

- (1) a Level 5 felony if it is committed by a person at least twenty-one (21) years of age; and
- (2) a Level 2 felony if it is committed by using or threatening the use of deadly force, while armed with a deadly weapon, or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(c) It is a defense that the accused person reasonably believed that the child was at least sixteen (16) years of age at the time of the conduct. However, this subsection does not apply to an offense described in subsection (a)(2) or (b)(2).

(d) It is a defense that the child is or has ever been married. However, this subsection does not apply to an offense described in subsection (a)(2) or (b)(2).

(e) It is a defense to a prosecution under this section if all the following apply:

(1) The person is not more than four (4) years older than the victim.

(2) The relationship between the person and the victim was a dating relationship or an ongoing personal relationship. The term "ongoing personal relationship" does not include a family relationship.

(3) The crime:

(A) was not committed by a person who is at least twenty-one (21) years of age;

(B) was not committed by using or threatening the use of deadly force;

(C) was not committed while armed with a deadly weapon;

(D) did not result in serious bodily injury;

(E) was not facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge; and

(F) was not committed by a person having a position of authority or substantial influence over the victim.

(4) The person has not committed another sex offense (as defined in IC 11-8-8-5.2) (including a delinquent act that would be a sex offense if committed by an adult) against any other person.

*As added by P.L. 79-1994, SEC.15. Amended by P.L.33-1996, SEC.9; P.L.216-1996, SEC.21; P.L.31-1998, SEC.8; P.L.266-2003, SEC.1; P.L.216-2007, SEC.45; P.L.158-2013, SEC.445.*

#### **IC 35-42-4-10**

##### **Unlawful employment near children**

Sec. 10. (a) As used in this section, "offender against children" means a person who is an offender against children under IC 35-42-4-11.

(b) As used in this section, "sexually violent predator" means a person who is a sexually violent predator under IC 35-38-1-7.5.

(c) A sexually violent predator or an offender against children who knowingly or intentionally works for compensation or as a volunteer:

(1) on school property;

(2) at a youth program center; or

(3) at a public park;

commits unlawful employment near children by a sexual predator, a Level 6 felony. However, the offense is a Level 5 felony if the person has a prior unrelated conviction based on the person's failure to

comply with any requirement imposed on an offender under IC 11-8-8.

*As added by P.L.6-2006, SEC.3; P.L.140-2006, SEC.31 and P.L.173-2006, SEC.31. Amended by P.L.1-2007, SEC.231; P.L.216-2007, SEC.46; P.L.158-2013, SEC.446.*

#### **IC 35-42-4-11**

##### **Sex offender residency restrictions**

Sec. 11. (a) As used in this section, and except as provided in subsection (d), "offender against children" means a person required to register as a sex or violent offender under IC 11-8-8 who has been:

- (1) found to be a sexually violent predator under IC 35-38-1-7.5; or
- (2) convicted of one (1) or more of the following offenses:
  - (A) Child molesting (IC 35-42-4-3).
  - (B) Child exploitation (IC 35-42-4-4(b)).
  - (C) Child solicitation (IC 35-42-4-6).
  - (D) Child seduction (IC 35-42-4-7).
  - (E) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age, and the person is not the child's parent or guardian.
  - (F) Attempt to commit or conspiracy to commit an offense listed in clauses (A) through (E).
  - (G) An offense in another jurisdiction that is substantially similar to an offense described in clauses (A) through (F).

A person is an offender against children by operation of law if the person meets the conditions described in subdivision (1) or (2) at any time.

(b) As used in this section, "reside" means to spend more than three (3) nights in:

- (1) a residence; or
- (2) if the person does not reside in a residence, a particular location;

in any thirty (30) day period.

(c) An offender against children who knowingly or intentionally:

- (1) resides within one thousand (1,000) feet of:
  - (A) school property, not including property of an institution providing post-secondary education;
  - (B) a youth program center; or
  - (C) a public park; or
- (2) establishes a residence within one (1) mile of the residence of the victim of the offender's sex offense;

commits a sex offender residency offense, a Level 6 felony.

(d) This subsection does not apply to an offender against children who has two (2) or more unrelated convictions for an offense described in subsection (a). A person who is an offender against children may petition the court to consider whether the person should no longer be considered an offender against children. The person may file a petition under this subsection not earlier than ten (10) years after the person is released from incarceration or parole,

whichever occurs last (or, if the person is not incarcerated, not earlier than ten (10) years after the person is released from probation). A person may file a petition under this subsection not more than one (1) time per year. A court may dismiss a petition filed under this subsection or conduct a hearing to determine if the person should no longer be considered an offender against children. If the court conducts a hearing, the court shall appoint two (2) psychologists or psychiatrists who have expertise in criminal behavioral disorders to evaluate the person and testify at the hearing. After conducting the hearing and considering the testimony of the two (2) psychologists or psychiatrists, the court shall determine whether the person should no longer be considered an offender against children. If a court finds that the person should no longer be considered an offender against children, the court shall send notice to the department of correction that the person is no longer considered an offender against children.

*As added by P.L.6-2006, SEC.8. Amended by P.L.140-2006, SEC.32 and P.L.173-2006, SEC.32; P.L.216-2007, SEC.47; P.L.214-2013, SEC.39; P.L.158-2013, SEC.447; P.L.168-2014, SEC.72.*

#### **IC 35-42-4-12**

##### **Sex offender Internet offense**

Sec. 12. (a) This section applies only to a sex offender (as defined in IC 11-8-8-4.5).

(b) A sex offender who knowingly or intentionally violates a:

- (1) condition of probation;
- (2) condition of parole; or
- (3) rule of a community transition program;

that prohibits the offender from using a social networking web site or an instant messaging or chat room program to communicate, directly or through an intermediary, with a child less than sixteen (16) years of age commits a sex offender Internet offense, a Class A misdemeanor. However, the offense is a Level 6 felony if the person has a prior unrelated conviction under this section.

(c) It is a defense to a prosecution under subsection (b) that the person reasonably believed that the child was at least sixteen (16) years of age.

*As added by P.L.119-2008, SEC.18. Amended by P.L.247-2013, SEC.8; P.L.158-2013, SEC.448; P.L.168-2014, SEC.73.*

#### **IC 35-42-4-13**

##### **Inappropriate communication with a child**

Sec. 13. (a) This section does not apply to the following:

- (1) A parent, guardian, or custodian of a child.
- (2) A person who acts with the permission of a child's parent, guardian, or custodian.
- (3) A person to whom a child makes a report of abuse or neglect.
- (4) A person to whom a child reports medical symptoms that relate to or may relate to sexual activity.

(b) As used in this section, "sexual activity" means sexual

intercourse, other sexual conduct (as defined in IC 35-31.5-2-221.5), or the fondling or touching of the buttocks, genitals, or female breasts.

(c) A person at least eighteen (18) years of age who knowingly or intentionally communicates with an individual whom the person believes to be a child less than fourteen (14) years of age concerning sexual activity with the intent to gratify the sexual desires of the person or the individual commits inappropriate communication with a child, a Class B misdemeanor. However, the offense is:

(1) a Class A misdemeanor if the person commits the offense by using a computer network (as defined in IC 35-43-2-3(a); and

(2) a Level 6 felony if the person has a prior unrelated conviction for a sex offense (as defined in IC 11-8-8-5.2).

*As added by P.L.119-2008, SEC.19. Amended by P.L.247-2013, SEC.9; P.L.158-2013, SEC.449; P.L.168-2014, SEC.74.*